

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

RICHARD MOORE,
Plaintiff,

-against-

ESMOR MANAGEMENT INC.,
JOHN RAMOS, and CHRIS JACKSON,

Defendants.

-----X

PLAINTIFF'S THIRD
AMENDED COMPLAINT

93 CIV. 3260 (LLS)

PLAINTIFF RICHARD MOORE, by his attorneys, SPODEK & BARRETT,
L.L.P., hereby alleges on information and belief as follows:

NATURE OF CLAIM

1) This is a proceeding for declaratory relief and monetary damages to redress the deprivation of rights secured to Plaintiff by 42 U.S.C. Sec. 1981, as amended by the Civil Rights Act of 1991, by 42 U.S.C. Sec. 1985, by the Constitution of the United States, and by New York state law.

JURISDICTION

2) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1331 and 1343, conferring original jurisdiction upon this court of any civil action to recover damages or secure equitable relief arising under a federal question, under any Act of Congress providing for the protection of civil rights, under the Declaratory Judgment Statute, 22 U.S.C. Sec. 2201, and under 42 U.S.C. 1981 and 1985. The Court's pendent jurisdiction of claims arising under New York State Law is invoked.

PARTIES

3) Plaintiff is a resident of the County of Bronx, City and State of New York.

4) Plaintiff is an African-American male.

5) Defendant Esmor Management, Inc. ["Esmor"] at all times mentioned herein was a corporation organized and existing under the laws of the State of New York, with its primary place of business in the County of Nassau, City and State of New York.

6) Defendant Chris Jackson is and at all times mentioned herein was an employee and officer of Esmor, and was, at all times herein, a resident of the State of New York.

7) Defendant John Ramos was at all times mentioned herein an employee of Esmor and/or an Esmor-related entity, "Esmor Manhattan Inc." and a resident of the State of New York.

8) Defendant Esmor at all times mentioned herein operated correctional facilities and services of behalf of various government agencies, including the Federal Bureau of Prisons.

9) At all times mentioned herein, defendant Esmor operated a "halfway house" known as Le Marquis Community Corrections Center ["Le Marquis"], located at 12 East 31st Street, New York, New York.

10) At all time mentioned herein, Esmor operated another "halfway house" known as Brooklyn Community Corrections Center, ["BCCC"] located at 988 Myrtle Avenue, Brooklyn, New York, through an entity known as "Esmor Brooklyn Inc."

FIRST FEDERAL CLAIM FOR RELIEF

11) At all times herein, Plaintiff was employed by Esmor Brooklyn Inc., and/or Esmor Management Inc.

12) Plaintiff began employment at BCCC in approximately October, 1991.

13) His responsibilities there initially involved home confinement counseling.

14) He was later promoted to Operations Manager at BCCC, in charge of facility operations, maintenance, and management.

15) In approximately March, 1992, plaintiff assumed additional duties at Le Marquis.

16) His responsibilities there included facility operations, maintenance, and management.

17) He continued to perform his duties at BCCC, the Brooklyn facility.


18) He continued to receive his salary from Esmor Brooklyn Inc.

19) At Le Marquis, plaintiff documented numerous violations, conditions, and deficiencies in the premises which posed a threat, hazard and/or nuisance to the safety, health and/or welfare of residents, staff, and visitors.


20) At Le Marquis, plaintiff documented numerous violations, conditions, and deficiencies in the premises which constituted a breach of Esmor's contractual duties to various governmental entities, including the Federal Bureau of Prisons.

21) Plaintiff reported these violations, conditions and deficiencies to supervisors and other officials at Esmor prior to May 15, 1992.

22) Plaintiff reported these violations, conditions and deficiencies to federal law enforcement officials prior to May 15, 1992.

 23) Plaintiff provided evidence concerning these violations, conditions and deficiencies to federal law enforcement officials and cooperated with said officials prior to May 15, 1992.

24) Plaintiff refused to condone or permit continuation of these violations, conditions, and deficiencies.

 25) Plaintiff refused to permit, allow, or condone falsifications of records concerning Esmor's operations.

26) Defendants Jackson and Esmor failed to address the reported conditions, deficiencies, and violations.

27) Defendants Jackson and Esmor instead changed the terms, benefits, conditions, and circumstances of plaintiff's employment, making it impossible for him to carry out his employment duties.

28) On May 15, 1992, at approximately 5:45 p.m., while plaintiff was on the premises of Le Marquis, in the performance of his employment duties, plaintiff was assaulted and severely beaten by defendant John Ramos.

29) Plaintiff thereby sustained severe and permanent physical and emotional injuries.

30) Said assault and beating was committed at the direction, encouragement, facilitation, and approval of defendants Esmor and Jackson, and with their intent.

31) Defendants Esmor, Jackson, and Ramos were motivated by racial animus against plaintiff, based on his race, color, and/or ethnic background.

32) Defendants Esmor, Jackson, and Ramos intentionally discriminated against plaintiff on the basis of his race, color, and/or ethnic origin.

33) The terms and conditions of plaintiff's employment included policies and procedures to:

Report and prevent conditions that jeopardized the safety, security, health, and welfare of residents, staff, and visitors;

Cooperate with law enforcement officials;

Prevent falsification of records;

Prevent employees from coercing, threatening or harming co-workers;

Relieve employees who posed a threat to others;

Provide a grievance procedure;

Investigate incidents of violence, intimidation and coercion;

Administer fairly and equitably all employment policies;

Administer employment policies in a manner free from racial discrimination.

34) Defendant Jackson inter alia was responsible for the implementation of these procedures.

35) Defendants Esmor and Jackson failed to enforce these policies and procedures for the benefit of plaintiff.

36) Defendants Esmor and Jackson failed to enforce Esmor's non-discrimination policies.

37) Defendants Esmor and Jackson selectively enforced Esmor's policies and procedures.

38) Defendants Esmor and Jackson departed from procedural norms in responding to plaintiff's reports of violations, conditions and deficiencies.

39) Defendants Esmor and Jackson departed from procedural norms in changing the terms, benefits, circumstances and conditions of plaintiff's employment and in terminating plaintiff's employment.

40) Defendants Esmor and Jackson departed from procedural norms in investigating the assault by Ramos.

41) Defendant Esmor and Jackson departed from procedural norms in disciplining John Ramos.

42) Defendants Esmor and Jackson treated plaintiff harshly and inequitably, compared to similarly situated employees of different races, colors, or ethnic origins.

43) Defendants Esmor and Jackson treated plaintiff and other African-American employees disparately from white employees.

44) The acts and omissions of defendants Jackson and Esmor set forth in paragraphs 26 through 43 were intentionally motivated by racial animus against plaintiff on the basis of his race, color, and/ or ethnic origin.

45) Defendants Esmor, Jackson, and Ramos showed callous indifference to plaintiff's federally protected right to employment free of racial discrimination under 42 U.S.C.1981(a), (b), and (c).

46) Defendants Esmor, Jackson, and Ramos showed callous indifference to plaintiff's federally protected right to give evidence in a manner free of racial discrimination under 42 U.S.C.1981.

47) Defendants Esmor, Jackson, and Ramos showed callous indifference to plaintiff's federally protected right to the full and equal benefit of all laws and proceedings for the security of persons and property free of racial discrimination under 42 U.S.C.1981(a).

48) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

SECOND FEDERAL CLAIM FOR RELIEF

48a) Plaintiff repeats and re-iterates paragraphs 1 through 48 as though set forth in full herein.

49) The above discriminatory pattern and practice by defendants, their agents, servants, and or employees violate the Thirteenth Amendment to the Constitution as protected by 42 U.S.C. Sec. 1981.

50) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

THIRD FEDERAL CLAIM FOR RELIEF

50a) Plaintiff repeats and re-iterates paragraphs 1 through 50 as though set forth in full herein.

51) On or before May 15, 1992, defendants Esmor, Jackson, and Ramos conspired for the purpose of impeding and obstructing the due course of justice, in violation of 42 U.S.C. 1985(2).

52) On or before May 15, 1992, defendants Esmor, Jackson, and Ramos conspired for the purpose of impairing plaintiff's rights under 42 U.S.C. 1981, and under the Thirteenth Amendment to the Constitution, in violation of 42 U.S.C. 1985(2).

53) In so conspiring, defendants were motivated by racial animus against plaintiff, on account of his race, color, or ethnic origin.

54) Defendants Esmor, Jackson, and Ramos shared a common purpose in protecting financial, contractual, proprietary and employment interests against the threat posed by an African-American critic.

55) Defendants Esmor, Jackson, and Ramos shared a common purpose in concealing unlawful conduct, contractual breaches, misrepresentations, unsafe conditions, hazards and deficiencies against the threat posed by an African-American critic.

56) Jackson was an officer and employee of Esmor with long-standing ties to Esmor principals and a proprietary interest in Esmor.

57) Jackson and Ramos were acquaintances of long-standing, with prior common employment, and prior mutual acquaintances.

58) Ramos was employed by an Esmor affiliate, and had long-standing ties to Esmor principals.

59) Esmor, Jackson, and Ramos conveyed information amongst themselves that plaintiff was criticizing Esmor practices, that plaintiff refused to stop his documentation of deficiencies, that plaintiff was cooperating with law enforcement officials and providing evidence, that plaintiff would not accept financial gain in exchange for silence, that plaintiff had to be intimidated and coerced for his past activities and to prevent further criticism of Esmor.

60) In furtherance of this conspiracy, defendant Jackson and Esmor agents, servants and employees drastically changed the terms and conditions of plaintiff's employment, making it impossible for him to perform his employment duties.

61) In furtherance of this conspiracy, all defendants acted to intimidate, threaten, and coerce plaintiff from giving further evidence to law enforcement officials.

62) In furtherance of this conspiracy, defendant Jackson encouraged, condoned, facilitated and/or directed the brutal assault by Ramos upon plaintiff.

63) In furtherance of this conspiracy, defendant Ramos assaulted plaintiff.

64) In furtherance of this conspiracy, defendants Esmor and Jackson deviated from procedural norms in that they failed to take measures to control Ramos (an individual with known vicious propensities), failed to carry out the required investigation of the workplace assault on plaintiff, failed to discipline Ramos, and later re-hired Ramos in another capacity.

65) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

FOURTH FEDERAL CLAIM FOR RELIEF

66) Plaintiff repeats and re-iterates paragraphs 1 through 65 as though set forth in full herein.

67) On or before May 15, 1992, defendants Esmor, Jackson, and Ramos conspired for the purpose of depriving plaintiff of the equal protection of law and of the equal privileges and immunity under the law, in violation of 42 U.S.C.1985(3).

68) On or before May 15, 1992, defendants Esmor, Jackson, and Ramos conspired for the purpose of impairing plaintiff's rights under 42 U.S.C. 1981, and under the Thirteenth Amendment to the Constitution, in violation of 42 U.S.C.1985(3).

69) In so conspiring, defendants were motivated by racial animus against plaintiff, on account of his race, color, or ethnic origin.

70) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

FIRST STATE CLAIM FOR RELIEF

71) Plaintiff repeats and re-iterates paragraphs 1 through 70 as though set forth in full herein.

72) The foregoing incident and resulting injuries and damages to plaintiff were caused by the intentional acts of assault and battery of employees of Esmor, and the intentional instigation of defendant Jackson and/or other Esmor principals, officers, agents, servants, and employees.

73) At all times herein, defendants Ramos and Jackson were acting in the scope of their employment and pursuant to their employment duties with defendant Esmor.

74) Defendant Esmor is vicariously liable for said assault and resulting damages.

75) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

SECOND STATE CLAIM FOR RELIEF

76) Plaintiff repeats and re-iterates paragraphs 1 through 75 as though set forth in full herein.

77) Defendant Ramos brutally and intentionally beat plaintiff, causing him to sustain the injuries set forth in more detail above.

78) Defendant Jackson intentionally, maliciously, and wantonly directed, condoned, suggested, participated in and or approved the beating.

79) The beating was without provocation or cause.

80) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages, attorneys' fees, costs, and disbursements.

THIRD STATE CLAIM FOR RELIEF

81) Plaintiff repeats and re-iterates paragraphs 1 through 80 as though set forth in full herein

82) Prior to May 15, 1992, plaintiff disclosed to one or more public bodies or officials certain activities, policies, and/or practices of defendant Esmor which violated laws, rules, and/or regulations and which presented substantial and specific dangers to the public health and safety.

83) Defendants Esmor and Jackson, individually and through their agents, servants, and employees, took prohibited retaliatory action against plaintiff as a result of said disclosures.

84) Said retaliatory action constituted a violation of Sec. 740 of the Labor Law of the State of New York.

85) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages.

FOURTH STATE CLAIM FOR RELIEF

86) Plaintiff repeats and re-iterates paragraphs 1 through 88 as though set forth in full herein

87) Defendant Esmor owed a duty to plaintiff to use reasonable care in the hiring, screening, investigation, supervision and retention of its employees, including but not limited to, defendants Jackson and Ramos.

88) Defendant Esmor negligently failed to screen employees for emotional stability, violent propensities, proper credentials, and/or appropriate experience; negligently hired unsuitable employees for positions of responsibility; negligently failed to properly train its employees; negligently failed to implement reasonable and necessary employment practices; negligently failed to implement its own employment practices; negligently failed to periodically test, review, evaluate, and retrain its employees; negligently failed to supervise and/or discipline its employees, and were otherwise negligent.

89) Defendant Esmor knew or should have known that Jackson and/or Ramos were unsuitable, unqualified, unreliable, unstable, and otherwise unfit for the positions they held.

90) Defendant Esmor thereby breached its duty to plaintiff.

91) As a proximate cause of defendant Esmor's negligence, plaintiff was seriously and permanently injured in the manner set forth in the foregoing paragraphs.

92) As a direct and proximate result of the unlawful conduct of defendant Esmor as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages.

93) The foregoing injuries were caused entirely by the negligence of defendant Esmor, its agent, servants, and employees, without any negligence on the part of plaintiff.

94) Defendant Esmor's conduct was wanton, reckless, outrageous, and shocks the conscience.

95) As a direct and proximate result of the unlawful conduct of defendants as described above, plaintiff sustained personal injury, loss of employment, loss of income, loss of employment benefits, humiliation, emotional anguish, and other damages in the sum of five million dollars, and demands judgment against each defendant in that amount, plus punitive damages.

96) Plaintiff demands trial by jury of this action.

WHEREFORE, plaintiff demands judgment as follows:

Against defendant Esmor, five million dollars each on the first through fourth federal claims, and on the first, third, and fourth state claims, plus punitive damages on all Federal claims and on the first and fourth state claims;


Against defendant Jackson, five million dollars each on the first through fourth federal claims, and on the first, second and third state claims, plus punitive damages on all Federal claims, and on the second state claim;

Against defendant Ramos, five million dollars each on the first through fourth federal claims, and on the first and second state claims, plus punitive damages on all Federal claims and on the second state claim;

Against all defendants, declaratory judgment that the defendants have violated plaintiff's civil rights pursuant to 42 U.S.C Sec. 1981 and 1985, pursuant to the Thirteenth Amendment to the Constitution and/or rights accruing under New York state law, together with such attorneys' fees, costs, and disbursements of this action as the Court

may award.

Dated: New York, New York
April 22, 1996

Signed, 

SPODEK & BARRETT, L.L.P.

By: JANE N. BARRETT, ESQ. JNB5341

Attorneys for Plaintiff

61 Broadway, Suite 1050

New York, New York 10006-2701

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
SS:
COUNTY OF NEW YORK)

Roslyn T. Hamp being duly sworn, deposes and says:

That deponent is not a party to the action, is over 18 years of age and resides in Kings County and is employed at Spodek & Barrett, L.L.P., 61 Broadway, New York, New York 10006-2701.

That on the 22nd day of April, 1996 deponent served the within **Plaintiff's Third Amended Complaint** upon:

Mark Seitelman, Esq.
233 Broadway, Suite 901
New York, New York 10279

by delivering by hand a true copy of same personally to an attorney in that office, a white female, blond, approximately 30 years old, who acknowledge service.

Roslyn T. Hamp
Roslyn T. Hamp

Sworn to before me this
22 day of April, 1996.

~~Notary Public~~

JUNE NICOLE LAFORTE
Notary Public, State of New York
No. 4838441
Qualified in Richmond County
Commission Expires ~~March 30, 1987~~

Feb. 27, 1998

[illegible]

That deponent is not a party to the action, is over 18 years of age and resides in Kings County and is employed at Spodek & Barrett, L.L.P., 61 Broadway, New York, New York 10006-2701.

John Ramos
Defendant pro se
514 East 5th Street - Ap. 16
New York, New York 10009

Roslyn T. Hamp
Roslyn T. Hamp

Notary Public

JUNE NICOLE LAFORTE
Notary Public, State of New York
No. 4838441
Qualified in Richmond County
Commission Expires ~~March 30, 1987~~

Feb 28, 1998

[illegible]

Feb 28/1998